

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN D. WHITNEY LLC, and JOHN  
WHITNEY individually,

Plaintiffs,

vs.

THIBAUT INC.,

Defendant.

CIVIL ACTION NO.: \_\_\_\_\_

JURY TRIAL DEMANDED

*ELECTRONICALLY FILED*

**COMPLAINT IN CIVIL ACTION**

COMES NOW, the Plaintiffs, JOHN D. WHITNEY LLC, and JOHN WHITNEY, by and through their attorneys, BRODAK LAW, LLC, and JOSEPH I. BRODAK, ESQUIRE, and brings this Complaint of which the following is a statement:

**JURISDICTION AND VENUE**

1. This is an action to redress the breach of contract/agreement by Defendant against Plaintiffs, causing damages to Plaintiffs in excess of Seventy-Five Thousand (\$75,000.00) Dollars. Jurisdiction is further predicated upon the diversity of citizenship of the parties, as per Title 28 U.S.C. §1332.

2. All, or substantial all, of the events, facts, and circumstances giving rise to the instant Complaint occurred in the Western District of Pennsylvania, and, therefore, venue is appropriate under 28 U.S.C. §1391 (b)(2) and (c)(2).

**PARTIES**

3. Plaintiff, John D. Whitney LLC, is a Pennsylvania limited liability company (PA Entity #3274279) with a principle place of business at 209 Adams CT, Apollo, PA 15613.

4. Plaintiff, John Whitney, is an adult male citizen of Apollo, Westmorland County, Pennsylvania.

5. At all relevant times, Plaintiffs acted through and did business as John Whitney & Associates.

6. Defendant, Thibaut, Inc., is a foreign corporation registered to do business in Pennsylvania (PA Entity #571623/4280263) with a principle place of business located at 480 Frelinghuysen Ave., Newark, NJ 07114-1428.

7. A JURY TRIAL IS DEMANDED AS TO ALL COUNTS TO THE EXTENT PERMITTED BY LAW.

**FACTUAL ALLEGATIONS**

8. In August of 2007, the parties entered into a written agreement (Exhibit 1) whereunder Plaintiffs would endeavor to act as an independent sales representative for Defendant's product line in designated geographical areas for designated commission rates, all as stated in the text of the agreement. All terms of said agreement were drafted completely and exclusively by Defendant.

9. In September of 2011, Defendant, acting through its CEO, Robert Senior, unilaterally reduced the commission rate scale applicable to Plaintiffs' territorial sales in direct contravention of the existing provisions of the agreement (Exhibit 2).

10. In January of 2017, Defendant, again unilaterally reduced the contractual sales territories of Plaintiffs by removing Central Indiana, in direct contravention of the existing provisions of the agreement.

11. In July, August and September of 2017, Defendant unilaterally and purposefully withheld and retained for itself, sales commissions of Plaintiffs duly earned and payable under the 2007 agreement, in direct contravention of the provisions of the agreement and for stated reasons not contemplated within the language of said agreement (Exhibit 3).

12. It is believed and therefore averred that in addition to the aforesaid breaches by Defendant of the 2007 agreement between the parties, for an extended period and possibly throughout the term of the agreement, Defendant purposefully and surreptitiously excluded from commission calculations for Plaintiffs certain sales by Plaintiffs that should properly have been considered and compensated by Defendant under the stated provisions of the 2007 agreement.

13. Pursuant to the terms of the 2007 agreement between the parties, in late August of 2017, Defendant notified Plaintiffs that the 2007 agreement between the parties would be terminated as of September 29, 2017 (Exhibit 4).

#### **BREACH OF CONTRACT**

14. Plaintiffs incorporates herein by reference paragraphs 1 through 13 of this Complaint as if stated in full.

15. The breaches by Defendant of the 2007 agreement between the parties, as outlined in paragraphs 8 through 13 above, have resulted in monetary damages to Plaintiffs in excess of the statutory jurisdictional requirements.

WHEREFORE, the Plaintiffs, John D. Whitney LLC, and John Whitney demand compensatory damages of the Defendant, Thibaut Inc., in an amount in excess of \$75,000, plus interest and costs of suit.

**JURY TRIAL DEMANDED AS TO EACH COUNT OF THIS COMPLAINT.**

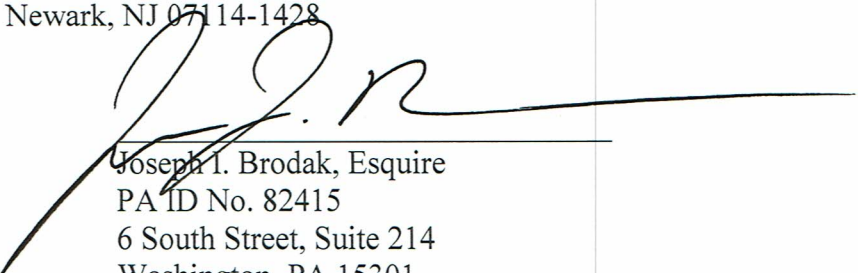




**CERTIFICATE OF SERVICE**

I, Joseph I. Brodak, attorney for the Plaintiff, hereby certify that on FEB 28, 2018, a true and correct copy of the foregoing COMPLAINT IN CIVIL ACTION was served upon the following person by USPS Registered Mail, postage prepaid:

Bob Senior  
Thibaut, Inc.  
480 Frelinghuysen Ave.  
Newark, NJ 07114-1428



Joseph I. Brodak, Esquire  
PA ID No. 82415  
6 South Street, Suite 214  
Washington, PA 15301  
Phone: (724) 993-4440  
Fax: (724) 206-9153  
*Counsel for Plaintiff*

FEB, 28, 2018